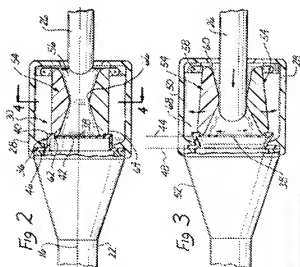


### Remarks

The claims have been amended as indicated above. The amendments are being made to clarify the invention. The amendments are fully supported by the specification, claims, and figures as originally filed. No new matter is believed or intended to be involved.

The Office Action rejected claims 1-24 under 35 U.S.C. § 102(b) as being anticipated by Ritchart (5,209,737). While the rejection is now moot since claims 1-24 have been canceled, Applicants traverse this rejection and request reconsideration over the new claims because this cited portions of the reference do not teach or suggest the combination as currently claimed. Indeed, the pending claims are similar in several respects to the claims in co-pending application 10/815,356, which Applicants already distinguished over Ritchart.

Figs. 2 and 3 of Ritchart are reproduced below for convenience to illustrate the operation of Ritchart trocar before and after instrument (26) insertion:



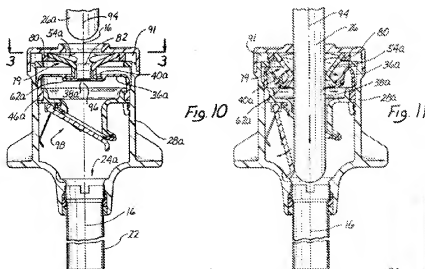
To maintain pressure of the insufflation gas, Ritchart uses an elastomeric septum seal lip (40) to seal against the instrument (26). Specifically, the septum seal lip (40) includes a central orifice (38) through which the instrument (26) passes and engages to provide the seal. Ritchart also includes several levers (54). One end of the lever (54) is mounted on a pivot (58) and the other end is attached to the septum seal lip (40) using the tooth member (62). As explained in

greater detail below, the levers (54) are used to adjust the size of the orifice (38) to accommodate the instrument:

As the instrument 26 is pushed into the throat 66 of the channel, its cross-sectional area, which exceeds the width of the channel, pushes the levers 54 radially outwardly, thereby pivoting the levers about their respective pivots 58, and moving the lever distal ends radially outwardly, as shown by the arrows in FIG. 3. Consequently, the engaging relationship between the lever teeth 62 and the lip 40 expands the lip radially outwardly. It is of particular advantage that the seating portions 46 of the seal are axially offset from orifice 38 and the lip 40, as discussed above. This positions the lip so that it is free to expand into the open space 68. (5:10-21, emphasis added).

The leverage provided by the levers 54 is best illustrated again by reference to FIG. 3, where it can be seen that the lever arm for measuring the diameter of the instrument 26 is less than the lever arm for spreading the lip 40. The expansion of the lip 40 in turn stretches the inner portions 42 of the septum 36, causing the radial width of the central orifice 38 to be expanded, as shown by the FIG. 3 arrows, to a second cross-sectional area which is slightly smaller than the particular cross-sectional area of the instrument 26. As a result, the instrument 26 may pass through the orifice 38 into the transition channel 52 and the channel 22 fairly easily, with the orifice closing tightly as to create significant frictional resistance between the instrument 26 and the septum 36. Such resistance is to be avoided since it not only opposes forward movement of the instrument 26 but also tends to tear the septum 36. (5:22-38, emphasis added).

Ritchart also discloses a modified embodiment that uses a different hinge arrangement for the lever (54). This embodiment is similar to that shown above, and equivalent elements are designated by the same reference numeral followed by the letter "a". Figs 10 and 11 are reproduced below illustrating the lever/septum seal interplay:



Each of the levers 54a is mounted on a pivot 58a at its proximal end, and has at least one tooth member 62a at its distal end. This tooth member 62a is adapted to engage the septum lip 40 as previously discussed. (6:59-62).

The Office Action draws several inaccurate or unsubstantiated conclusions regarding Ritchart. Without limitation, the Office Action inaccurately characterizes the levers as being “layered elastomeric members”. The Office Action also fails to cite any basis for concluding that the levers in Ritchart are “elastomeric.” Moreover, in both Ritchart embodiments the levers contact the instrument; however, the levers do not seal against insufflatory gases. Instead, Ritchart uses the septum seal lip to form a seal against the instrument. In contrast, the independent claims require “seal segments . . . adapted to seal against objects positioned through the seal”; or “elastomeric members circumscribing an aperture in an interwoven pattern and cooperate to seal against objects positioned within the aperture”; and “plurality layered elastomeric members cooperating to seal against instruments positioned through the aperture”. Instead, the septum seal lip in Ritchart is taught as being elastomeric (4:7-13).

The Office Action provisionally rejected claims 1-24 under the judicially created doctrine of obviousness-type double patenting over claims 1-32 of co-pending application number 10/815,356. Claims 1-24 have been cancelled thus rendering moot the provisional rejection. Nevertheless, if the provisional rejection is maintained in view of the present claims, to facilitate an early notice of allowance Applicants will consider signing a terminal disclaimer.

Based on the foregoing, all of the pending claims are in a condition for allowance. Applicants traverse all rejections and request reconsideration, and Applicants request an early notice of allowability.

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Respectfully submitted,

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